

Service Date: September 27, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of Qwest)	UTILITY DIVISION
Communications Filing To Offer Voice)	DOCKET NO. N2000.7.111
Messaging Service On a Deregulated Basis.)	ORDER NO. 6272

FINAL ORDER

Findings of Fact

1. On July 27, 2000, QWEST Communications (formerly known as U S West) filed, pursuant to ARM 38.5.2705, to provide Voice Messaging Service (VMS) as a deregulated product in the Montana market.

2. On August 14, 2000, the Montana Public Service Commission (Commission) issued a Notice of Application giving an opportunity to request a hearing, intervene in, or offer comments in this docket. No comments or requests for hearing or intervention were received. However, other responses to the filing were received, as described below.

Background

3. VMS provides telephone answering and message distribution service. Calls are routed to the VMS server from the end user via the switched network. Messages are then recorded and stored on the server for later retrieval by the VMS customer. In its filing Qwest provided the information required in ARM 38.5.2705 to determine the regulated status of VMS. Qwest believes voice messaging products fall outside the definition of a regulated telecommunications service as defined in § 69-3-803(6)(a), MCA:

"Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

Qwest asserts that VMS is a store and retrieve enhanced service and not a two-way switched voice product.

Discussion

4. Staff received several inquiries from the public regarding Qwest's intent to deregulate VMS. These inquiries included: will Qwest change the way VMS is offered and how will deregulation affect the rate being charged for VMS. In response to a Commission data request (PSC-3a), Qwest indicated that VMS will continue to be offered the way it is now, and that no plans exist to change the rates for VMS "at this time." Id.

5. In addition to these inquiries Essen Communications (Essen) filed a letter requesting the Commission reject Qwest's application as discriminatory. In its letter Essen argues that if VMS is deregulated Qwest will no longer make it available for resale and, as such, resellers would be forced to procure VMS through a third party vendor, which Essen argues would be prohibitively expensive. Essen claims the loss of VMS would cost its company significant numbers of customers and further tilt the playing field in favor of Qwest. In response, Qwest contends voice messaging will still be made available for resale and that there will be no changes in the way it is offered. Qwest further states that although it believes voice messaging is an "enhanced" service, and not a "telecommunications" service, the Commission in Docket D96.11.200, the U S West/AT&T arbitration docket, ordered that US West make VMS available for resale. Order No. 5961b, p. 39. Therefore, Qwest is obligated to make VMS available for resale.

6. Finally, the FCC determined that VMS is an enhanced service and not a two-way switched telecommunications service. (See FCC Docket No. 85-229, Report and Order No. 86-252, adopted May 15, 1986, released June 16, 1986.) The FCC affirmed this decision in its Bell South Section 271 decision stating "... voice mail and voice messaging services are information services, not telecommunications services, and, thus, are not subject to this checklist provision." (FCC Docket No. 98-121, Memorandum Opinion and Order, Order No. 98-271, adopted and released October 13, 1998, ¶ 314.)

Commission Decision

7. The Commission has reviewed the filing and concurs with Qwest that VMS is not a two-way switched voice product because the VMS platform is not part of the switched

network; therefore, VMS falls outside the definition of a regulated telecommunications service as defined at §69-3-803(6)(a). Qwest remains obligated to make VMS available for resale.

Conclusions of Law

1. Qwest is a public utility subject to the jurisdiction of the Montana Public Service Commission. §§ 69-3-101 and 69-3-102, MCA.
2. "Regulated telecommunications service" is defined at § 69-3-802(6)(a)(b), MCA.
3. Not all telecommunications services are regulated telecommunications services under Montana law.
4. The Commission by rule has established a process for asserting that a telecommunications service is not regulated. ARM 38.5.2705.
5. Qwest has complied with ARM 38.5.2705 in this filing.
6. Qwest's voice messaging service is not a regulated telecommunications service in Montana.

Order

1. The Commission approves Qwest's application and declares that VMS is not a regulated telecommunication service in Montana. Qwest shall continue to make VMS available for resale.

DONE AND DATED this 19th day of September 2000, by a vote of 5-0.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.